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Jennipher Grudzien

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WILLIAM M HANLON, JR
YOUNG & BASILE, PC
3001 WEST BIG BEAVER ROAD
SUITE 624
TROY, MI 48084-3107

EXAMINER

LEVKOVICH, NATALIA A

ART UNIT

PAPER NUMBER

1797

MAIL DATE

DELIVERY MODE

03/06/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Invention I (claims 1-20), drawn to an array diagnostic device and methods of its assembling, the device comprising an array substrate, a gasket with wells, a plate with through holes and a clamp;
 - II. Invention II (claims 21-37), drawn to an array device comprising a flexible micro-titer plate and means for joining a plate to a substrate, the means being located on the surface of the plate.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the plate assembly of Invention I, as claimed, does not require the well plate to be formed of a flexible material. The micro-titer plate of Invention II can be used, for example, as a sample storage.

3. Note that the claims of each of the above identified inventions are subject to further restriction, since they are directed to several patentably distinct species of the claimed invention.

With respect to Invention I, claim 14 is generic to the following species:

Species I (claims 15-19), drawn to a method of assembling an array device using clamps;

Species II (claim 20), drawn to a method of assembling an array device using adhesives.

With respect to Invention II, claim 21 is generic to the following species:

Species 1 (claims 24 and 34-35), drawn to an array device where the means for joining comprise adhesives;

Species 2 (claims 27 and 36), drawn to an array device where the means for joining comprise electrostatic forces.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 14 and 21 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

5. A telephone call was made to Mr. William Hanlon on 02/25/2008 to request an oral election to the above restriction requirement, but did not result in an election being made.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Natalia Levkovich whose telephone number is 571-272-2462. The examiner can normally be reached on Mon-Fri, 8 a.m.-4p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Jill A. Warden/

Supervisory Patent Examiner, Art Unit 1797